

JPA File No.: 06-138 I  
AG Contract No.: KR07-0154TRN  
Project No.: STP-000-6(186)A  
Project: Flashers & Gates  
Section: Hadley Street (Phoenix)  
TRACS No.: SR205 01C  
Budget Source Item No.: N/A

120753 . .

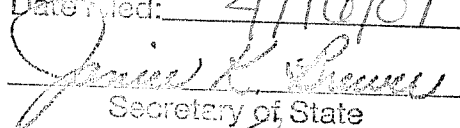

**INTERGOVERNMENTAL AGREEMENT**

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF PHOENIX

**THIS AGREEMENT** is entered into this date April 16<sup>th</sup>, 2007, pursuant to the Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF PHOENIX, acting by and through its City Manager (the "City"). The State and the City are collectively referred to as "Parties".

**I. RECITALS**

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The City is empowered by Arizona Revised Statutes City Charter II, Section 2.i. to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
3. Congress has authorized appropriations for the erection of automatic warning signals, automatic gate arms, plank crossings, pavement markings, and other railroad crossing related appurtenances.
4. The City has selected a project within the boundary of the City, the field survey of the project has been completed, and the plans, estimates and specifications have been prepared and, as required, submitted to the State and Federal Highway Administration ("FHWA") for their approval.
5. The only interest of the State in the project is in the acquisition of Federal Funds for the use and benefit of the City by reason of Federal Law and regulations under which funds for the Project are authorized to be expended.

NO. 288601  
Filed with the Secretary of State  
Date Filed: 4/16/07  
  
Secretary of State  
By: 

6. The work encompassed in this Agreement is to upgrade the railroad crossing (AAR/DOT No. 025-834-C) by furnishing and installing flashers and gates at the intersection of Hadley Street and 11<sup>th</sup> Avenue, hereinafter referred to as the "Project". The estimated cost of the Project is as follows.

Furnish and install flashers and gates (by railroad forces)	
Federal Aid Funds @ 100%	<u>\$287,273.00</u>
<b>Total Cost of the Project</b>	<b>\$287,273.00</b>

**THEREFORE**, in consideration of the mutual covenants expressed herein, it is agreed as follows:

## **II. SCOPE OF WORK**

1. The State shall:

a. Submit a program containing the aforementioned Project to FHWA with the recommendation that it be approved for construction.

b. If such Project is approved for construction by FHWA and the funds are available for construction of the Project, the State with the aid and consent of FHWA will authorize the BNSF Railway Company to proceed with the work covered by the State Railroad Agreement and will request the maximum Federal Funds available.

c. Should some unforeseen conditions or circumstances increase the cost of said work required by a change in the extent of Scope of Work called for in this Agreement, the State shall not be obligated to incur any expenditure, on behalf of the City, in excess of the amount referenced herein, unless and until so authorized in writing by the City and approved by the FHWA.

2. The City shall:

a. Acquire any necessary right-of-way for this Project and hereby certifies that all necessary rights-of-way have been or will be acquired.

b. Once acquired, remove from the City right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been or will be removed.

c. Agree not to permit or allow any encroachments, except those authorized by permit, upon or private use of the City's right-of-way. In the event of any unauthorized encroachment or improper use, the City shall take all necessary steps to remove or prevent any such encroachment or use.

d. Upon completion of construction, be responsible to provide for at its own cost and as an annual item in its budget, proper maintenance, such maintenance (exclusive of maintenance by the Railroad Company of its facilities), to include, but is not limited to, traffic signals, signs, islands, curbs and markings necessary for the purpose of regulating, warning and guiding traffic.

e. Be responsible to mark and sign railway-highway grade crossings in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways, within 45 days after the railroad has completed its work.

f. By such regulation and ordinance as can be provided, be responsible to regulate parking and not permit vehicles to be left on the street in any manner other than at any parallel with the curb and to restrict parking so as to prevent conflicts with moving traffic.

### **III. MISCELLANEOUS PROVISIONS**

1. This Agreement shall remain in full force and effect until completion of the work herein embraced; provided, however, that any provisions in this Agreement for maintenance shall be perpetual, unless assumed by another competent governmental entity.

2. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction project. The City, in regard to the City's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. Such assumption of the responsibility by the City for the benefit of the State in no way acts as a waiver by the City for the benefit of the railroad company or any responsibility the railroad company has in the design, plans, specifications, reports, the engineering in connection therewith and the construction or the improvements contemplating, cost overruns and construction claims. It is understood and agreed that the State's participation is confined solely to securing Federal Aid; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the City and that to the extent permitted by law, the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this Agreement by the City, any of its departments, agencies, officers and employees the City, any of its agents, officers and employees, or any of its independent contractors. Cost incurred by the State, any of its departments, agencies officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

3. The cost of construction and construction engineering work covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this Agreement. Therefore, the City agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of Federal Aid received.

4. This Agreement shall become effective upon filing with the Secretary of State.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

6. The provisions of Arizona Revised Statutes § 35-214 are applicable to all parties to this Agreement and all parties shall be afforded the same rights, interest and obligations.

7. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by Arizona Revised Statutes § 12-1518 as applicable.

8. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17<sup>th</sup> Avenue, Mail Drop 616E  
Phoenix, Arizona 85007  
(602) 712-7525  
(602) 712-7424 Fax

City of Phoenix Traffic Engineering  
Attn: Street Transportation  
Department  
200 W. Washington St., 5<sup>th</sup> Fl.  
Phoenix, Arizona 85003-1611  
(602) 262-6136  
(602) 495-2016 Fax

9. This Agreement is subject to all applicable provisions of the Americans with Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

10. Non-Availability of Funds: Every payment obligation of the State or the City under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State or the City at the end of the period for which the funds are available. No liability shall accrue to the State or the City in the event this provision is exercised, and the State and the City shall not be obligated or liable for any future payments as a result of termination under this paragraph.


11. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

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**IN WITNESS WHEREOF**, the parties have executed this Agreement the day and year first above written.

**CITY OF PHOENIX**, a Municipal  
Corporation, Frank Fairbanks, City Manager

**STATE OF ARIZONA**  
Department of Transportation

By   
ROSS D. BLAKLEY, JR. P.E., Director  
Street Transportation Department

By   
SAM MAROUFKHANI, P.E.  
Deputy State Engineer, Development

ATTEST:

By   
MARIO PANIAGUA  
City Clerk



G:06-138-Dist E Phoenix U&RR @Hadley Street  
Draft 1 ghc 12/7/06N. Veloso comments Dated 2/6/07  
DLB COMMENTS DATED 2/6/07  
Final draft 2/13/07 ghc

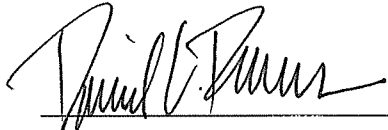
  
CITY CLERK DEPT.  
FEB 26 PM 1:40

**ATTORNEY APPROVAL FORM FOR THE CITY OF PHOENIX**

I have reviewed the above-referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the City, an Agreement among public agencies, which has been reviewed pursuant to A.R.S. § 11-951 through § 11-954, and declare this Agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 22<sup>nd</sup> day of March, 2007.

  
\_\_\_\_\_

ACTING City Attorney

**CITY OF PHOENIX  
REQUEST FOR COUNCIL ACTION**

Complete this form per O.P. 1.906 and A.R. 4.11.  
Refer to the City Council Agenda Process Reference Guide for Assistance

<b>ACTION REQUESTED</b>	Formal Action:		OR	Legal Document:	
	Bid Award <input type="checkbox"/> License Application <input type="checkbox"/> Public Hearing <input type="checkbox"/> Other <input type="checkbox"/>			Ordinance <input type="checkbox"/> Resolution <input checked="" type="checkbox"/>  Emergency Clause? <input type="checkbox"/> (for use only w/ord. or res. requests)	
<b>IMPACTED DISTRICT(S)</b>	DISTRICT 4		<b>ADDITIONAL BACKUP MATERIAL SENT UNDER SEPARATE COVER?</b>		<input checked="" type="checkbox"/>
<b>SUBJECT</b>	AGREEMENT WITH ARIZONA DEPARTMENT OF TRANSPORTATION - RAILROAD CROSSING - HADLEY STREET				
<b>REQUESTED AGENDA DATE</b>	3/7/2007	<b>PREPARED BY</b>	Name: Noe Veloso Department: Street Transportation Phone: 534-9564		
<b>APPROVALS</b>	Division Head:	J. Don Herp, P.E.		If prepared for another department: Department Name:	
	Department Head:	Ross D. Blakley, Jr., P.E.			
				Approval:	
<b>BID AWARD INFORMATION</b>	Bid Surety Required? <input type="checkbox"/>		Performance Surety Required <input type="checkbox"/>		
	Submitted by Low Bidder? <input type="checkbox"/>		Amount? _____		
		Contract Required? <input type="checkbox"/>		Requisition No. _____	
<b>CONTRACT INFORMATION</b>	Contract Amendment? <input type="checkbox"/>				
	If Yes, Current Contract No. _____				
	Approved by:		Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Formal Action <input type="checkbox"/>	on Date: _____	
<b>BUDGET INFORMATION</b>	\$ 0.00		To Be Encumbered? <input type="checkbox"/>		
	Source of Funds:		Fiscal Year? _____		
	Federal Funds				
	Fund Center(s) (SAP-FM):		ST85100290		
		Commitment Item(s) (SAP-FM):			
<b>CITY MANAGER'S OFFICE</b>	<b>Approved by</b>			CM Control No. <b>11</b>	
	Thomas E. Callow, P.E. 2/20/07				
<b>CITY CLERK DEPARTMENT</b>	Council Action Taken: Adopted				
	Ordinance Number:		RCA No. 54727		
	Resolution Number: 20474		Contract No. _____		
	Comments:		Meeting Date 3/7/2007		
				Item No. 73	

**ITEM****DISTRICT 4****AGREEMENT WITH ARIZONA  
DEPARTMENT OF  
TRANSPORTATION -  
RAILROAD CROSSING -  
HADLEY STREET**

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Request authorization for the City Manager, or his designee, to enter into an agreement with the State of Arizona through the Arizona Department of Transportation (ADOT) to furnish and install flashers and gates at the railroad crossing on Hadley Street. The work will be done by railroad forces using federal funds. The total project cost is \$283,273.00.

The City of Phoenix will provide all right-of-way for this project at no cost to the State of Arizona. The City of Phoenix will also remove all obstructions and encroachments from the proposed right-of-way at no cost to the State of Arizona. Current plans indicate that no additional right-of-way is required for this project.

Upon completion of construction, the City of Phoenix shall provide for maintenance of items such as traffic signals, signs, islands, curbs, and markings necessary for the purpose of regulating, warning, and guiding traffic. The City of Phoenix shall also mark and sign railway-highway grade crossings in accordance with the requirements of the current edition of the *Manual on Uniform Traffic Devices for Streets and Highways*.

**Financial Impact**

Funding for this project will be provided by ADOT and disbursed to BNSF Railway Company for the cost of the project.

**Citizen Notification**

No public notification is required for this project.

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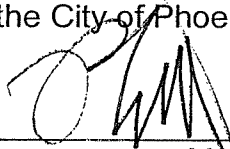
RESOLUTION 20474

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE STATE OF ARIZONA THROUGH THE ARIZONA DEPARTMENT OF TRANSPORTATION (ADOT) FOR IMPROVEMENTS TO THE RAILROAD CROSSING AT HADLEY STREET.

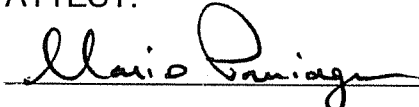
BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PHOENIX as follows:

SECTION 1. The City Manager is authorized to enter into an agreement with the State of Arizona through the Arizona Department of Transportation (ADOT) for improvements to the railroad crossing at Hadley Street.

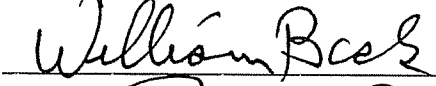
PASSED by the Council of the City of Phoenix this 7th day of March, 2007.

  
MAYOR

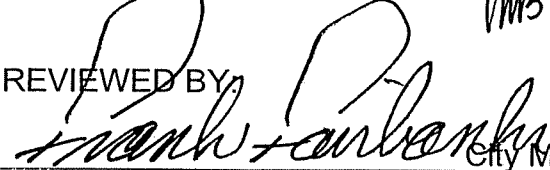
ATTEST:

 City Clerk

APPROVED AS TO FORM:


 Acting City Attorney  
VMB

REVIEWED BY:

 City Manager

CITY CLERK DEPT. 04  
2007 MAR -5 AM 11:19



<p><b>TERRY GODDARD</b> Attorney General</p>	 <p><b>OFFICE OF THE ATTORNEY GENERAL</b> STATE OF ARIZONA</p>	<p><b>CIVIL DIVISION</b> <b>TRANSPORTATION SECTION</b> Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan Davis@azag.gov</p>
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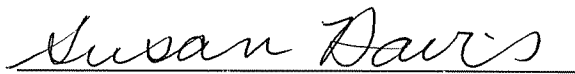
**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR07-0154TRN (**JPA 06-138-I**), an Agreement between public agencies, i.e., The State of Arizona and The City of Phoenix, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: April 9, 2007

TERRY GODDARD  
Attorney General

  
SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

SED:mjf:1007908  
Attachment